

# AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

123 SOUTH CALHOUN STREET  
P.O. BOX 391 (ZIP 32302)  
TALLAHASSEE, FLORIDA 32301  
(850) 224-9115 FAX (850) 222-7560

September 15, 2021

**VIA: ELECTRONIC FILING**

Mr. Adam J. Teitzman  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Dkt. 20210137 – Post-Workshop Comments on the proposed adoption of  
Rule 25-18.010, F.A.C.

Dear Mr. Teitzman:

Attached for filing in the above docket are Tampa Electric Company's Post-Workshop  
Comments.

Thank you for your assistance in connection with this matter.

Sincerely,



Malcolm N. Means

MNM/bmp  
Attachment

cc: Service List (w/attachment)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Proposed Adoption of Rule 25-18.010, F.A.C., )  
Pole Attachment Complaints )  
\_\_\_\_\_ )

DOCKET NO. 20210137-EI

FILED: September 15, 2021

**TAMPA ELECTRIC COMPANY'S  
POST-WORKSHOP COMMENTS**

Tampa Electric Company (“Tampa Electric” or “the company”), submits the following Post-Workshop Comments addressing Commission Staff’s proposed adoption of Rule 25-18.010, Florida Administrative Code, governing Pole Attachment Complaints (“Draft Rule”).

**Introduction**

Tampa Electric would like to thank Staff for their work developing the initial Draft Rule as published on August 17, 2021 [*See* Document No. 09409-2021], and for facilitating a useful rule development workshop on September 1, 2021 (“Workshop”). The company generally supports the Draft Rule but believes that there are areas where the Draft Rule could be clarified or enhanced, as explained below.

**Comments**

**1. Response Expected Pursuant to Subsection (3)**

With the clarification at the Workshop that it will not be necessary to file testimony and exhibits or produce other evidence when filing the response required by Subsection (3), the company does not object to the proposed text; however, the Commission, in an abundance of caution, may wish to consider adding language to Subsection (3) specifying the content it expects to see in the response contemplated in the rule. The Commission should also consider adding language specifying that the

30-day period for filing a response can be extended by the Commission or pre-hearing officer for cause shown.

## **2. Clarify that Respondent Can Request a Hearing**

Subsection (1)(i) of the Draft Rule specifies that the complaint must include a statement regarding whether the complainant is requesting an evidentiary hearing. Pursuant to Section 120.569 of the Florida Statutes, which governs agency decisions which affect substantial interests, “[a]ll parties shall be afforded an opportunity for a hearing.”

The Draft Rule also requires that the complaint include a statement of the facts giving rise to the dispute. The Uniform Rules of Procedure adopted by the Commission require that an initial pleading include a statement of all disputed issues of material fact and, if there are none, a statement to that effect. See § 28-106.201(2) (d), F.A.C.

Tampa Electric believes that the Draft Rule should expressly state that a complaint must include a statement of all disputed issues of material fact and, if there are none, a statement to that effect; that a respondent may assert in its response that there are disputed issues of material fact; and that a respondent may request an evidentiary hearing in accordance with Section 120.569, Florida Statutes. This is incorporated in the company’s markup of the Draft Rule.

## **3. Shorter Time for Resolution of Access Complaints**

Subsection (5) of the Draft Rule imposes a limit of 360 days for the Commission to take final action on a complaint filed pursuant to the Draft Rule. At the Workshop, some parties commented that Subsection (5) should provide for a shorter period for final Commission resolution of pole access complaints. The company believes that the Commission will be able to review complaints when filed and can establish an expedited schedule for resolution as appropriate based on the allegations in the

complaint and the response to it. Consequently, the company does not believe the Draft Rule needs to single out specific types of complaints for expedited resolution.

If the Commission decides to adopt a shorter time period for resolving pole access complaints, the company suggests that the Commission consider the approach in the FCC rules, which calls for final action on a pole access complaint “no later than 180 days from the date the complaint is filed with the [FCC].” 47 C.F.R. § 1.1414(a). If the Commission adopts this approach, it should take care to ensure that the expedited time frame applies only to pole *access complaints*, and not to complaints about the rates, terms, or conditions associated with pole access. The FCC considers an “access complaint” to be a complaint “that alleges a complete denial of access to a utility pole.” 82 Fed. Reg. 61443, at 61454. The FCC does not consider the term “access complaint” to include “a complaint alleging that a utility is imposing unreasonable rates, terms, or conditions that amount to a denial of access.” *Id.* The company included proposed language to implement these concepts in the attached edits to the Draft Rule.

#### **4. FCC Rate Formula**

During the Workshop, some parties commented that the Commission should insert the FCC’s pole attachment rate formula, set out in 47 C.F.R. § 1.1406, into the Draft Rule. As Staff noted at the Workshop, the Draft Rule is intended to be a procedural rule. The methodology for determining the reasonableness of a rate is a substantive matter, and Tampa Electric does not believe the FCC rate formula belongs in the Commission’s procedural rule. Moreover, while Section 366.04 directs the Commission to apply FCC decisions and orders in evaluating pole attachment complaints, it also states that FCC “precedent is not binding upon the commission” and permits pole owners and attaching entities to present alternative cost-based pole attachment rates. § 366.04(8)(e), Fla. Stat.

Consequently, adopting the FCC rate formula as part of the Draft Rule would be arguably inconsistent with the statute and the FCC rate formula should not be included in the Draft Rule.

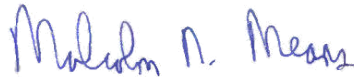
**5. Edits to Draft Rule 25-18.010**

Attached hereto are proposed amendments to Draft Rule 25-18.010 in redline format reflecting and implementing the matters discussed in these post-workshop comments.

WHEREFORE, Tampa Electric Company submits the foregoing Post-Workshop Comments on the Proposed Adoption of Rule 25-18.010, F.A.C.

DATED this 15<sup>th</sup> day of September, 2021

Respectfully submitted,



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JAMES D. BEASLEY  
[jbeasley@ausley.com](mailto:jbeasley@ausley.com)  
J. JEFFRY WAHLEN  
[jwahlen@ausley.com](mailto:jwahlen@ausley.com)  
MALCOLM N. MEANS  
[mmeans@ausley.com](mailto:mmeans@ausley.com)  
Ausley McMullen  
Post Office Box 391  
Tallahassee, Florida 32302  
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

1 25-18.010 Pole Attachment Complaints

2 (1) A complaint filed with the Commission by a pole owner or attaching entity pursuant to  
3 Section 366.04(8), Florida Statutes, must contain:

4 (a) The name, address, email address, and telephone number of the complainant or  
5 complainant's attorney or qualified representative;

6 (b) A statement describing the facts that give rise to the complaint, including a statement of  
7 material facts that are in dispute, or a statement that there are no disputed issues of material fact;

8 (c) A statement of the rules and laws governing the complaint;

9 (d) Names of the party or parties against whom the complaint is filed;

10 (e) An explanation of previous steps taken to reach an agreement on the issue;

11 (f) A copy of the pole attachment agreement, if applicable, and identification of the pole  
12 attachment rates, charges, terms, conditions, voluntary agreements, or any denial of access  
13 relative to pole attachments that is the subject matter of the complaint;

14 (g) A statement of the issues to be resolved;

15 (h) If applicable, the dollar amount in dispute;

16 (i) A statement of the relief requested, including whether a Section 120.569 and 120.57,  
17 Florida Statutes, evidentiary hearing is being requested to resolve the complaint; and

18 (j) A certificate of service that copies of the complaint have been furnished by email to the  
19 party or parties identified in paragraph (1)(d) of this rule.

20 (2) The filing date for the complaint is the date that a complaint is filed with the Commission  
21 Clerk containing all required information set forth in subsection (1) of this rule.

22 (3) The pole owner or attaching entity that is the subject of the complaint must file its  
23 response with the Commission within 30 calendar days of the date the complaint was served on  
24 that party. The Commission or the prehearing officer shall grant a reasonable extension of this  
25 deadline for cause shown.

1        (4) The response shall include a statement of material facts that are in dispute, or a statement  
2 that there are no disputed issues of material fact, and shall state whether the respondent is  
3 seeking an evidentiary hearing pursuant to Section 120.569 and 120.57 of the Florida Statutes.

4        (4)(5) If the pole owner or attaching entity intends to ask the Commission to establish an  
5 alternative cost-based pole attachment rate in a Section 120.569 and 120.57, Florida Statutes,  
6 evidentiary proceeding, it must provide the methodology with the complaint or with the  
7 response.

8        (5) (6) The Commission will take final action on a complaint at a Commission Conference no  
9 later than 360 days after the complaint's filing date as set forth in subsection (2) of this rule; but  
10 may adopt an expedited schedule for resolution for cause shown.

11 Rulemaking Authority 350.127(2), 366.04(8)(g) FS. Law Implemented 366.04(8) FS. History-

12 New \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Workshop Comments, filed on behalf of Tampa Electric Company, has been furnished by electronic mail on this 15<sup>th</sup> day of September, 2021 to the following:

<p>Adria Harper Kathryn Cowdery Office of the General Counsel <b>Florida Public Service Commission</b> 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 <a href="mailto:aharper@psc.state.fl.us">aharper@psc.state.fl.us</a> <a href="mailto:kcowdery@psc.state.fl.us">kcowdery@psc.state.fl.us</a></p> <p>Richard Gentry <b>Office of Public Counsel</b> c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, FL 32399-1400 <a href="mailto:gentry.richard@leg.state.fl.us">gentry.richard@leg.state.fl.us</a></p> <p><b>AT&amp;T</b> Tracy Hatch/MaryRose Sirianni 150 South Monroe St., Suite 400 Tallahassee, FL 32301 <a href="mailto:Th9467@att.com">Th9467@att.com</a> <a href="mailto:Ms8675@att.com">Ms8675@att.com</a></p> <p><b>Beck Bush and Charlie Dudley</b> <a href="mailto:becky@flapartners.com">becky@flapartners.com</a> <a href="mailto:cdudley@flapartners.com">cdudley@flapartners.com</a></p> <p><b>Cindy Miller LLC</b> Cindy Miller 1544 Cristobal Drive Tallahassee, FL 32303 <a href="mailto:milcindy@gmail.com">milcindy@gmail.com</a></p>	<p><b>Cox Communications (20 CA)</b> Esther Northrup 5887 Copley Drive, Suite 300 San Diego, GA 92111 <a href="mailto:Esther.Northrup@cox.com">Esther.Northrup@cox.com</a></p> <p><b>Cox Communications (20 LA)</b> Chari E. Lawrence 7401 Florida Boulevard Baton Rouge, LA 70806 <a href="mailto:Chari.Lawrence@cox.com">Chari.Lawrence@cox.com</a></p> <p><b>Crown Castle Fiber LLC</b> Rebecca Hussey/Van Bloys <a href="mailto:Rebecca.hussey@crowncastle.com">Rebecca.hussey@crowncastle.com</a> <a href="mailto:Van.bloys@crowncastle.com">Van.bloys@crowncastle.com</a></p> <p><b>CTIA</b> Matt DeTura 1400 16th Street, NW Washington, DC 20036 <a href="mailto:MDeTura@cita.org">MDeTura@cita.org</a></p> <p><b>ExteNet Systems, Inc.</b> Haran C. Rashes 3030 Warrenville Road, Suite 340 Lisle, IL 60532 <a href="mailto:hrashes@extenetsystems.com">hrashes@extenetsystems.com</a></p> <p><b>Florida Power &amp; Light Company (21b Juno)</b> Maria Jose Moncada 700 Universe Boulevard Juno Beach, FL 33408-0420 <a href="mailto:Maria.moncada@fpl.com">Maria.moncada@fpl.com</a></p>
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**Joint Administrative Procedures  
Committee**

Ken Plante, Coordinator  
680 Pepper Bldg.  
111 W. Madison Street  
Tallahassee, FL 32399  
[Joint.admin.procedure@leg.state.fl.us](mailto:Joint.admin.procedure@leg.state.fl.us)

**Rutledge Law Firm (21a)**

Marsha E. Rule  
119 South Monroe Street, Suite 202  
Tallahassee, FL 32301-0551  
[marsha@rutledge-ecenia.com](mailto:marsha@rutledge-ecenia.com)

Ms. Dianne M. Triplett

**Duke Energy Florida**

299 First Avenue North  
St. Petersburg, FL 33701  
[Dianne.triplett@duke-energy.com](mailto:Dianne.triplett@duke-energy.com)  
[FLRegulatoryLegal@duke-energy.com](mailto:FLRegulatoryLegal@duke-energy.com)

**Frontier Florida LLC (Brubaker)**

Gregory C. Brubaker  
[Gregory.c.brubaker@ftr.com](mailto:Gregory.c.brubaker@ftr.com)

**James R. Kelly**

359 Milestone Drive  
Tallahassee, FL 32312  
[Kellyjr2694@gmail.com](mailto:Kellyjr2694@gmail.com)

Ms. Beth Keating

**Gunster, Yoakley & Stewart, P.A.**

215 S. Monroe St., Suite 601  
Tallahassee, FL 32301  
[bkeating@gunster.com](mailto:bkeating@gunster.com)



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ATTORNEY